EPITOME OF THE LAW

RELATING TO

EUROPEAN BRITISH SUBJECTS

IN THE

MOFUSSIL;

WITH THE RULES FOR MAKING COMMITMENTS TO THE HIGH COURTS &c., &c.



THIRD EDITION;

REVISED AND ENLARGED.



COMPILED BY

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PREFACE.



This is a revised and considerably enlarged edition of a work published ten years ago, which has long been out of print.

During this interval various Acts have been passed, in the provisions of which European British Subjects are concerned, in a greater or less degree, equally with the natives; and it was suggested to the compiler that a re-issue of his former publication which should include these new laws might prove useful to the large body of officers exercising judicial functions as well as to the european public generally.

The present compilation is the result of this suggestion; and all that the compiler has to say respecting it is simply this, that he has done his best to make the work as complete as it was possible to make it consistently with the means of information within his reach.

Allahabad, December 1865.

TYPOGRAPHICAL ERRORS



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EUROPEAN BRITISH SUBJECTS.

PERSONS ENTITLED TO CLAIM THE PRIVILEGES OF EUROPEAN BRITISH SUBJECTS.

THE Courts of S. D. A & N. A. have had before them your letter dated 7th Instant, with its enclosure from the Judge and Magistrate of Bareilly, requesting the opinion of the Court as to whether a person named Dubois, who was born at Chandernagore of European parents, should be considered an European, and consequently subject to the prohibition contained in Sec. 3 Reg. XIX, 1803.

2. In reply, I am desired to communicate to you the opinion of the Court, that the parents of the individual above named having been Europeans, the place of his birth is immaterial; and that he should therefore be considered an European. *Cons. No.* 397.

ILLEGITIMATE children should be classed with their mothers, and must be considered British Subjects, European foreigners, or American, according as their mothers may respectively be British, Foreign European, or American. *Cons No.* 806.

THE illegitimate son of a E. B. S. by a native mother can be tried by the Local Criminal Courts on a charge of adultery, but under the existing regulations a married woman, the legitimate child of a British father, is not amenable to the Local Courts on a similar charge preferred against her by her husband. *Cons. No* 978.

A PERSON born in India, in wedlock, of a European father and East Indian mother, is a British subject, and entitled to all the privileges enjoyed by that class. *Cons. No* 1236.

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ABBREVIATIONS.

C. O.	Circular Order.
Cons	Construction.
C P. C.	Criminal Procedure Code.
D M.	Deputy Magistrate.
E. B. S.	European British Subject.
E. I. C.	East Indian Company.
G. G.	Governor General.
J. M.	Joint Magistrate.
J. P.	Justice of the Peace.
M.	Magistrate.
P. C.	Penal Code.
S. C.	Supreme Court.
S D. A.	Sudder Dewany Adawlut.
Sec.	Section of an Act.
S N. A.	Sudder Nizamut Adawlut.

Native Armenian, East Indian, or foreign mothers. Whether the privilege extends beyond the grandson has never been determined, and may be treated as an open and doubtful question.

My own opinion is that if the East India Company's possessions in India continued in the same state, in respect of sovereignty, as they were in 1774, when the Charter and the first Statute relating to the Supreme Court were passed, no descendant beyond the grandson of a E. B S. would be entitled to the privileges of a British subject, such descendant and his father, and intermediate male ancestor or ancestors being born in this country For in that case, as India was, when the Charter and Statute passed, out of the allegiance of the Crown, and its inhabitants were in theory the subjects of the Great Mogul, the descendants born in this country of a E. B S. would be born out of the allegiance, and would be aliens, but for the operation of certain general English Statutes (25 Edward III, chap 2.—7, Anne chap. 5.—4 Geo. II chap, 21,—13 Geo. III chap. 21) and by these statutes the privileges of a British subject are limited to grandchildren by the father's side of natural-born subjects. The same result would follow whether the mother or female ancestors were British subjects or not.

But my impression is that from the time when our possession in India became the dominion of the crown, a different result followed; and that all children, grandchildren, or more remote legitimate descendants, born after that time within those dominions of a E. B. S. became themselves entitled to all the privileges of a British subject without the aid of the general statutes above referred to, as being born within, and not out of, the allegiance of the Crown. I therefore am inclined to think, that in respect of all persons descended legitimately from a male E. B. S. and born in British India subsequently to the vesting of the sovereignty in the Crown* there is no limit in point of degree of descent, to the rights of such persons to claim the privileges of British subjects. *S. N. A. March 23rd 1859—C. O. No. 3.*

* The date of such vesting, it was certainly after 1774, and previous to 1813 Practically for the present purposes, I think the beginning of the century may be taken as the period.

THE FOLLOWING is the opinion of the Advocate General given in answer to certain questions put by the Joint Magistrate of Mirzapore in 1858 relative to the liability to the Mofussil Criminal Courts of persons born in this country lawfully descended from male European British Subjects, whose mothers, grand mothers or more remote ancestresses, may not have been in any sense British subjects.

The questions put are these :—

A, the son of a E. B. S. is born in wedlock at Patna in India and married an Armenian woman in this country, from whom he had issue B, likewise born in lawful wedlock. Is B. a E. B. S. so as to render him *not* amenable to the Mofussil Criminal Court, or not?

What is the limit, if any, to country-born persons, descended legitimately from one European male ancestor several generations back, to be themselves considered as E. B. S. so as to render them not amenable to the said Courts?

Reply of the Advocate General (W. Ritchie.)

I am of opinion that in the case (put by you) B. as the son born in wedlock of A. who was the son born in wedlock in British India, of a E. B. S. is clearly a British subject within the meaning of the Charter of, and Acts relating to the Supreme Court, and is not amenable to the jurisdiction of the Mofussil Criminal Court.

The circumstance that A's mother was an Armenian, and that B's mother was not a E. B. S. makes no difference in this respect. The son of a father who was a E. B. S. and the son of such son, are both British subjects within the meaning of the Charter and Statutes, whatever be the race or country of their mother, provided the sons were born in wedlock.

The second question put by you is a more difficult one.

It is certain that the legitimate grand-sons in the male line of a E. B. S. are entitled to all the privileges of British subjects within the meaning of the Charter and Statutes, though both they and their fathers may have been born in this country of

being tried and convicted before the Supreme Courts of Judicature for offences committed beyond the local limits of such courts *Sec.* 26.

AMENABLE TO THE MOFUSSIL COURTS FOR OFFENCES AGAINST THE ACT CONCERNING THE BINDING OF APPRENTICES.

For the purposes of this Act all British subjects, wherever or of whatever parents born, as well as other persons in the territories under the Government of the East India Company without the Towns of Calcutta and Madras, and the Town and Island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of the East India Company *Act XIX of* 1850 *Sec.* 23.

NOT AMENABLE TO THE " ACT FOR THE PREVENTION, TRIAL, AND PUNISHMENT OF OFFENCES AGAINST THE STATE.

Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects. *Act XI* 1857 *Sec.* 6.

LANDED PROPERTY & ITS OBLIGATIONS.

IT is hereby enacted, that after the 1st day of May next it shall be lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emolument, issuing out of land, in any part of the territories of the East India Company.

And it is hereby enacted, that all rules which prescribe the manner in which such property as is aforesaid may now be acquired and held by natives of the said territories, shall extend to all persons who shall, under the authority of this Act, acquire or hold such property. *Act IV.* 1837.

AMENABILITY.

Amenable to the Civil Courts.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts. *Act VIII,* 1859 *Sec.* 4.

Amenable to the Revenue Courts.

It is hereby enacted and declared, that within the British territories under the Government of the East India Company, no person whatever is or shall be, by reason of place of birth, or by reason of descent, in any proceeding whatever connected with arrears or exactions of rent, excepted from the jurisdiction of the Revenue Courts, anything in Act No. XI of 1836 contained notwithstanding. *Act III* 1839.

Amenable to the Code of Criminal Procedure.

No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal Procedure contained in this Act.—Provided that nothing in this section shall be held to authorize the trial or commitment for trial before any Criminal Court, of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that court. *C. P. C. Sec.* 25.

Except where otherwise expressly provided by this Act, every offence shall be enquired into and determined in the district, or division of a district in which the offence was committed. Provided that nothing in this section shall exempt E. B. S from

their trial before such Court of Session or Supreme Court, and to exercise all the powers necessary for such purpose. *Sec.* 38.

No person who is not a Justice of the Peace, shall commit, or hold to bail, any E. B. S. to take his trial before a Supreme Court of Judicature. *Sec.* 39.

When a E. B. S. is charged with an offence triable by a Supreme Court of Judicature, any Magistrate may hear the complaint against such person, and may issue a warrant of arrest, or hold to bail such person, with a view to the complaint being investigated by a Justice of the Peace. *Sec.* 40.

When a E B. S. has been arrested under a warrant, issued under the last preceding Section by a Magistrate, not being a J. P. if such Magistrate, considers that there is sufficient ground for proceeding, he shall forthwith forward the person arrested to a J. P. or if the offence with which such person is charged is bailable, shall, if sufficient bail be tendered, admit him to bail for his appearance before a J. P. When the person accused is brought or appears before a J. P. under this Section, such J. P. shall himself hold the preliminary enquiry into the case before he commits or holds to bail such person for trial before the Supreme Court of Judicature. *Sec.* 41.

Nothing in this chapter shall interfere with the Jurisdiction given by the Statute 53 George III C 155, S 105 or Act VII of 1853 (*to extend the jurisdiction of Magistrates under the 53 George III C 155 S 105 in cases of assault forcible entries, and other injuries accompanied by force, not being felonies*) Provided that the jurisdiction given by the said statute and the said Act, shall be exercised only by a J. P. *Sec.* 42.

In the event of its being found necessary to commit a E. B. S for trial before the Supreme Court, it will be necessary for the

No person whatever, being the owner, holder, or farmer of any property in land, or in any emoulments issuing out of land, in any part of the said territories (*British India*) whether in perpetuity or for a term, or being a local Agent, or Manager of any such property, is by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the Police, or with the Salt or Opium Revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local Agent or Manager thereof. *Act II* 1853 *Sec.* 1.

For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a native of the said territories. *Sec.* 2

POWERS OF MAGISTRATES.

It shall be competent to the Magistrate of the District, or to any other officer exercising the powers of a Magistrate, to hold the preliminary enquiry into any cases triable by a Supreme Court of Judicature, and to commit or hold to bail persons to take their trial before such court, and to exercise all the powers necessary for such purpose. *C. P. C. Sec.* 37.

The Local Government may empower any Subordinate Magistrate of the first or second class, not vested with such power by any law for the time being in force, to hold the preliminary enquiry into cases triable by the Court of Session, or by any Supreme Court of Judicature, and may empower such subordinate Magistrate to commit or hold to bail, persons to take

him. A Magistrate will not be justified, if he has reason to suppose that a prisoner is a E. B. S. in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a E. B. S. the Magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof or produce documents which although not amounting to full legal proof of his status, satisfy the court that he is really a E. B. S. the Magistrate should without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a J. P. and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner that he is a British Subject of lawful European descent. *S. N. A. 23rd March* 1859 *No.* 3.

E. B. S. When brought before the Magisterial authorities for any alleged offence is not to be interrogated upon the matter charged against him, but merely asked if he wishes to make a statement in regard to the charge, and at the same time warned that whatever he may say will be made use of against him. After such question and warning, the statements made by the accused are to be taken down, and the following form of examination is to be made use of;—The examination of A. B. of— indigo planter, taken by me J. P. Esq Magistrate of—and one of Her Majesty's Justices of the Peace the—day of—186— ; the said examinant being charged on the solemn affirmation of C. D. of—with having (*here state the charge*) and being duly cautioned saith Taken before me the day and year above mentioned. *S N. A 25th April* 1845 *No.* 528.

In cases of assault, forcible entry, or other injury accompanied with force, committed by a E. B. S. on a Native of India, the Magistrate may impose a fine not exceeding 500 Rs. This fine if not paid may be levied upon his property If no property be

conviction of such person that there be direct proof of his amenability to that court. The mode of proof will consist in the evidence of a credible person who knows the accused and his place of birth, or who has heard him declare of what country he is. *S. N. A. 4th April* 1845. *No.* 434.

THE Criminal Courts are enjoined not to proceed to try and sentence a person whom they may themselves have fair reason, from any cause, to regard as probably not subject to their jurisdiction, without making all practicable enquiry to satisfy themselves on this point. *S. N. A. 28th March* 1850 *No.* 357.

THE following question was to the Advocate General by the Joint Magistrate of Mirzapore :—I beg also to request that you will be good enough to inform me whether the Circular of the Sudder Nizamut, throwing the *onus probandi*, that a defendant is amenable to the Mofussil Court *i. e*, is not a European British Subject, on the Magistrate or Committing Officer, is still in force or not ?

ANSWER.—The Construction No. 759 of the Sudder Nizamut Adawlut appears to be still in force in that court; but it is, I apprehend, inaccurately framed, and has been remarked on as incorrect by the late Chief Justice Sir Lawrence Peel in the Supreme Court. It is also, if taken without qualification, opposed to the spirit of the Privy Council's decision in Calder *vs.* Halnett. I think however that the rule itself is not incorrect if it be taken with the following qualification :—If the Magistrate know that the prisoner is a European British Subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a Magistrate. If without any actual knowledge on the subject, the Magistrate have reason to suppose that the prisoner is such a British Subject, it is the Magistrate's duty to ascertain from him whether he alleges or denies that he is one. And if he alleges that he is, to give him every facility by allowing time, and otherwise for proving that he is, the burden of such proof being on

So much of the Act of Parliament 53, George III C. 155 S. 105, as requires that, in all cases of conviction of a British Subject under the provision contained in that section, the Magistrate before whom such conviction takes place, shall forthwith transmit copies of such conviction and of all depositions and orther proceedings relative thereto, to the Government to which the place where the offence was committed is subordinate; and so much of the same Section of the above mentioned Act, as prescribes that any part of any fines shall be transmitted by the Magistrate to the Clerk of the Crown or other officer to whom it belongs to receive fines in any of Her Majesty's Courts of Oyer and Terminer and Jail Delivery, and that such fines shall be disposed of in the same manner as other fines imposed by such courts; and so much of Sec. 2 Reg. XV of 1809 of the Bengal Code, and Sec. 2 Reg. IV of 1806 of the Madras Code, as requires the Magistrate by whom any E. B. S. is held to bail or committed to take his trial before Her Majesty's Supreme Court at Calcutta, to transmit copies of the original depositions, together with translations of any papers not being in the English language, to the Secretary to Government, are hereby repealed. *Act XXII* 1854.

An Assistant to a Magistrate is not competent to take cognizance of complaints against E. B S. to the extent specified in Cap. 53, Geo III Sec. 105 and the powers in question can only be exercised by a person possessing the full power of a Magistrate. *Cons. No.* 595.

Ruling of the Sudder Court on a reference from the Joint Magistrate of Bugoora (1831.)

I am directed by the Court of N. A. to acknowledge the receipt of your letter of the 22nd ult. reporting a case in which an indigo planter confined in stocks four individuals, one of whom died in confinement, for the periods of 30, 34 and 60 days, in

found, the *offender* may be kept in confinement in some suitable place for a period not exceeding two months. If there be no fit place of confinement at the station, the prisoner is to be sent to *the Presidency* Jail. 53 *Geo III Cap* 155 *Sec* 105.

The whole or any portion of such fine may be awarded to the aggrieved party *Ibid*

The defendant is at liberty to lodge an appeal *against the* Magistrate's decision within six months in the Supreme Court by writ of *certeorari*. 33 *Geo. III Cap.* 52 *Sec.* 153.

On the subject of levying fines on the property of British born subjects under Sec 105 Stat 53 Geo III Cap 155, a reference was made to the Advocate General on a case in point which occurred in a district in the Lower Provinces, and the following is a summary of the opinion delivered by that officer

1 An attempt to levy the fine awarded must be *made, before* the Magistrate can commit the offender, unless it be proved at the time of conviction, that the party has no property within *the district.*

2 It must first be *ascertained* whether there be any property within the district, on which the fine can be levied.

3 Offender is not bound to disclose whether he has property or not.

4 Notice of the seizure and intended sale of property by public advertisement, and if practicable, by service on the offender himself, should in all cases be given.

5 In the first instance the warrant should be executed upon *personal* property, where any is to be found. The sale is to be of the " right title and interest."

6 Magistrate can deliver *personal* property to the purchaser, but has no authority to dispossess the party in possession of realty, or to deliver possession of it to the purchaser. Magistrate should deliver to the purchaser the usual certificate of sale, and there ends his duty. *S. N. A. April 16th* 1852 *No* 363.

the alleged offender should be resident, or in which such offence should have been committed, and that such Magistrate should have the power and authority therein mentioned and whereas Natives of India, resident in the East Indies, upon complaints referred by them under the aforesaid provisions of the said Act, may be prevented from obtaining redress under the same by reason of their inability to prove the place of their birth ; and whereas it is expedient to extend the aforesaid provisions of the said Act as amended by Act IV, 1843, to cases of assault, forcible entries, and other injuries accompanied with force, not being felonies, committed in any part of the territories under the Government of the East India Company, not being within the said Towns of Calcutta or Madrass, or the Islands of Bombay and Colaba, or the settlement of Prince of Wales' Island, Singapore and Malacca, against the person or property of any person whatever, whether a Native of India or not : It is enacted as follows :—

I. The provisions of the said Act of the 53rd George 3rd and of Act IV, 1843, so far as the said provisions extend to cases of assault, forcible entries or other injuries accompanied with force, not being felonies, against the person or property of any Native of India are hereby extended to the case of any assault, forcible entry, or other injury accompanied with force not being felony, which may at any time hereafter be committed in any part of the territories under the Government of the East India Company, not being within the said towns of Calcutta or Madras, the said Islands of Bombay and Colaba or the said settlement of Prince of Wales' Island, Singapore, and Malacca, by any British Subject or other person, against the person or property of any person whatever.

II. The powers in such cases given to the Magistrate of the Zillah or District, may be lawfully exercised by any Joint Magistrate, or other person lawfully exercising the powers of a Magistrate in the case of any such offence as aforesaid which

his factory, and requesting the court's opinion as to whether you are empowered to sentence the planter to a punishment of two months in each case, or must commit the case for the investigation of the Grand Jury.

2. In reply, I am directed to observe that Magistrates are empowered by Sec. 105 of 53rd Geo. III Cap. 155, to punish E. B. S. when convicted of assault, forcible entry or other injury accompanied by force, not amounting to felony.

3. In reply to your question as to your competency to award a separate punishment for each offence, the court can only observe that if the offences are charged separately there seems no reason why the sentences on conviction should not be likewise separate. I am desired however to point your attention to the statute law above referred to, which authorizes confinement only in default of payment of fine.

4. Should you after a full investigation of the case be of opinion that the offender ought to be brought to trial before the Supreme Court, you will of course proceed in the usual way, reporting the case for the information and orders of Government.
Cons No. 632.

THE PROVISIONS OF 53 GEO. III CAP. 155 S. 105 EXTENDED TO OTHER PERSONS BESIDES NATIVES OF THE COUNTRY.

Whereas, by an Act passed in the 53rd year of the reign of King George the third it was enacted amongst other things, that it should be lawful for any native of India resident in the East Indies or parts therein mentioned, and out of the Towns of Calcutta, Madras and Bombay, in case of any assault, forcible entry or other injury accompanied with force, not being felony, alleged to have been done against his person or property by a British Subject, to complain of such assault, forcible entry or other injury to the Magistrate of the zillah, or District where

3rd. *All witnesses must be bound down in recognizance to* attend at the Supreme Court in Calcutta, at noon on the first day of the first Sessions

The various Sessions commence throughout the year on the

4th February	...	...	1st Sessions.
29th March	..	...	2nd do
4th June	..	...	3rd do.
13th July	...	...	4th do.
27th August	...	...	5th do.
1st October	...	...	6th do. to be

regulated by the Doorgah Poojah Hindu Holidays.

4th December	...	...	7th Sessions.

4th. *The Magistrate should intimate to the Commissioner* of Police by letter, the names of the witnesses, and direct them all, European and Native, immediately on their arrival in Calcutta, to leave their names, and addresses at the Calcutta Police Office, where they will receive any information or assistance they may require.

5th. The witnesses, on the conclusion of the trial, will receive their *travelling expenses on application to the Commissioner* of Police who is charged with the duty of arranging for the payment of these according to rates fixed with reference to their circumstances and station in life.

6th The rates of payment for each class will be as follows :—

1st. Class—Each person coming under this class to be allowed 8 annas a mile as *travelling expenses for himself* and a servant, five Rupees per diem as Hotel allowance while in Calcutta, and two Rupees for Carriage hire each day he may have to attend the Supreme Court.

2nd Class—Persons of this class to have their actual travelling expenses, three Rupees per diem *for Board* in Calcutta, and one Rupee Palkee hire *for each day of attendance* at the Supreme Court.

may hereafter be committed within the district over which his authority extends. *Act VII,* 1853.

The Magistrate can entertain complaints against E. B. S in cases of debt not exceeding 50 Rs. the amount if not paid being recoverable in the same way as a fine. The decision of the Magistrate in cases under this section is final and conclusive to all intents and purposes. 53 *Geo. III, Cap.* 155 *S.* 106.

Magistrates are required to make a report, for the orders of Government of cases in which a E. B S. residing in the interior of the country is guilty of any act of illegal violence, injustice or oppression, towards the natives, in the prosecution of indigo, or other commercial transactions. *S. N. A. No.* 289 *30th April* 1824

Rules for the observance of Motussil Magistrates in cases of British Subjects committed by them, for trial by the Supreme Court, at Calcutta.

1. European prisoners when committed must be sent with their Warrants of commitment to the Great Jail of Calcutta, to the custody of the Sheriff, and a letter should be sent to the Commissioner of Police in Calcutta, giving the names and crimes of the Prisoners, as also the date and mode of forwarding them to Calcutta.

2nd. The depositions taken in the case must be sent at the same time to the clerk of the Crown, and the exhibits, such as sword, bludgeons, or stolen property, in charge of Police Officers, who can testify to them.

RULES FOR REGULATING THE PAYMENT OF TRAVELLING ALLOWANCES &c., TO PROSECUTORS AND WITNESSES ATTENDING CRIMINAL TRIALS AT THE HIGH COURT OF ORIGINAL JURISDICTION IN PUBLIC PROSECUTIONS.

All disbursements on this account are to be made by the Commissioner of Police Calcutta, to whom all Prosecutors and Witnesses are, on arrival at Calcutta to report themselves.

Europeans and Eurasians are to be divided into three classes. Care should be taken by Mofussil Magistrates despatching such persons that they are carefully classified according to their respective stations in life, and that the Commissioner of Police is duly informed.

The following rates are to be paid on account of expenses of this nature for persons coming to Calcutta and returning.

Travelling Expenses.	*1st Class.*	*2nd Class.*	*3rd Class.*
If by Dawk, ...	8 annas per mile, ...	*Bona fide* expenses of 2nd and 3rd Class Passengers.	
„ By Steamer (including mess) .. „ By Rail. ...	Actual expenses of 1st Class passage.		
Boarding Expenses.			
In Calcutta, ...	Rs. 5 pr. diem.	Rs. 3 pr. diem	1-8. pr. diem.
Conveyance hire for the days of actual attendance at the High Court.	Rs. 2 per diem.	Rupee 1 per diem.	Nil.
Dawk Bungalow and Hotel expenses by the way when Travelling by Dawk or by Rail.	Rs. 4 per diem.	Rs. 2 pr. diem.	1 Rupee per diem.

All classes of Native Prosecutors and witnesses are to be paid their *bona fide* Travelling charge and Boarding Expenses both by the way, and during their stay in Calcutta, according to their

3rd. *Class*—Persons of this class to have their actual travelling expenses, and (1—8—0) one Rupee eight annas per diem as Board allowance.

7th. Whenever advances may be given by Magistrates, or other Local Officers, to parties proceeding to Calcutta, such advances should be regulated by the foregoing scale.

8th. It will be the duty of such Magistrate or Local Officers to determine the class to which the prosecutor and each of the witnesses belong.

9th. Precise Rules on such a point do not seem to be called for. But generally, all officers, whether European or Native, holding a commission or a gazetted appointment, and all gentlemen of character and respectability whether European or Native, will belong to the first class; all clerks in Public offices, Tehseeldars, Inpectors of Police, Ministerial Officers, and Members of the Native middle classes, will belong to the 2nd class; and the 3rd class will include artizans, laborers, workmen, small shop keepers, and person in a similar condition of life.

10th Magistrates should be careful that while they send down those witnesses, who are absolutely necessary for a proper investigation of the case, none others should be compelled to leave their homes. The evidence of Native witnesses to *Soorut-hals*, and such documents are never taken in the Supreme Court. For instance, if the Civil Surgeon has examined the body of the murdered or wounded man, his evidence will be sufficient without that of the Natives who are recorded to have seen the wounds in the Mofussil investigation held by the Police. The presence of unnecessary witnesses invariably calls down the animadversions of the Judges of the Supreme Court.

ORDERS OF GOVERNMENT N. W. P. 1861, PAGE 149.

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Commitments to High Court in its Original Criminal Jurisdiction.

The court of Nizamut Adawlut are pleased to adopt and circulate for general information and guidance the annexed Circular Order No. 5 dated the 6th May 1864, of the High Court, Fort William, on the subject of commitments to that court in its original Criminal Jurisdiction.

It has been represented to the Court that Magistrates and Justices of the Peace after making commitments to the High Court in its original Criminal Jurisdiction do not promptly send the records of cases to the Clerk of the Crown, but frequently delay doing so until the commencement of the Sessions at which the cases are to be tried. Such a practice causes great inconveniences to all concerned, and deprives the Judge generally of the opportunity which he ought to have for looking over the depositions of the witnesses before the Grand Jury is charged and the case goes to trial. This Court is not aware of any reason for this delay in sending the record to the Clerk of the Crown, and after this circular, will not fail to notice with its displeasure any such delay on the part of any Magistrate or Justice of the Peace The Court takes this opportunity of reminding Magistrates and Justices of the Peace that a copy of the warrant of commitment should always form part of the record which is sent to the Clerk of the Crown.

2. The Court also requests the particular attention of Magistrates and J. P. to Rule 3 of the Rules circulated for their guidance by circular 85 of the Secretary to the Government of Bengal dated the 27th July 1860, which requires that all witnesses should be bound, in the usual form to attend at the Court House on a day specified, which should be the first day of the Sessions for which the prisoner is committed, and which, should be

station in life, of which due information is to be given to the Commissioner of Police in Calcutta, by the Magistrates despatching them.

Whenever practicable, Prosecutors and witnesses should travel by Rail or Steamer.

The boarding allowance at Calcutta will close as soon after the trial as the means of quitting the Presidency become available. The Commissioner of Police Calcutta, will see that this Rule is adhered to.

Mofussil Magistrates will make reasonable advances to persons desiring it to enable them to reach Calcutta. Intimation of such advances must be immediately made to the Commissioner of Police who is to refund the amount to the officer making the advance.

The Magistrate of the District from which Prosecutors and witnesses are despatched will report to the Commissioner of Police, the date of their departure, and will instruct them to report themselves to that officer on their arrival at Calcutta.

NOTE.—The foregoing Rules issued by the Government of Bengal were circulated to all Magistrates by the Government of the North Western Provinces, under date 21st May 1863, Circular No. 55 A. in modification of Circular No. 2 dated 15th June 1861.

Personal attendance may be dispensed with.

The Magistrate or other officer as aforesaid, may, if he see sufficient cause, dispense with the personal attendance of the person informed against, and permit him to appear and enter into the required security, or show cause against such requisition, by an Agent duly authorized to act in his behalf. *Sec* 286.

Discharged of party informed against.

If on the appearance of the person, or of his Agent, if he is permitted to appear by Agent, the Magistrate or other officer as aforesaid, shall not be satisfied that there is occasion to bind such person to keep the peace, he shall direct his discharge. *Sec.* 287.

Penalty of Disobedience.

It is Magistrate or other officer as aforesaid, shall be satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly; and if the person shall fail to comply with the order, it shall be lawful for the Magistrates or other officer as aforesaid, to commit him to jail. *Sec.* 288.

Limit of confinement.

The period for which the Magistrate or other officer as aforesaid, may bind a person to keep the peace with or without security, shall not exceed one year When a person shall be committed to jail under the preceding section, he shall not be detained by authority of the Magistrate or other officer as aforesaid beyond the term of one year, and shall be released whenever he shall comply with the order within that term. *Sec.* 289.

Extension of period of confinement.

Whenever it shall appear to the Magistrate or other officer aforesaid, that it is necessary for the preservation of the

any act that may probably occasion a breach of the peace, to summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace with or without sureties, as such Magistrate shall think fit. *C. P. C. Sec.* 282.

Form of Summons.

The summons shall set forth the substance of the information, the amount of the bond, and the term for which it is to be in force, and if security is called for, the number of sureties required, and the amount in which they are to be bound respectively. Such summons shall be served in the manner provided by this Act for the service of a summons on an accused person. *Sec.* 283.

Penalty.

The penalty of such bond, which shall be in the form (D) given in the Appendix, or to the like effect, shall be fixed with a due regard to the circumstances of the case, and the means of the party, and the amount in which the sureties shall be bound shall not exceed the said penalty. *Sec.* 284,

Warrant of arrest.

If the person summoned shall not attend on the day appointed, the Magistrate or other officer as aforesaid, if satisfied that the summons has been duly served, may issue a warrant for his arrest. Provided that whenever it shall appear to the Magistrate or other officer as aforesaid, upon the report of a Police Officer or upon other credible information, the substance of which report or information shall be recorded, that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, it shall be lawful for the Magistrate at any time to issue a warrant for the arrest of such person. *Sec* 285.

Enforcement of penalty against the principal party.

Whenever it may be proved before the Magistrate or other officer as aforesaid, that any recognizance or other bond taken under this Chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by the bond to pay the penalty thereof, or to show cause why it should not be paid; and if sufficient cause be not shown and the penalty be not paid the Magistrate or other officer as aforesaid, shall proceed to recover the same by the attachment and sale of any of the morveable property belonging to the person bound thereby, which shall be found within the jurisdiction of the Magistrate of the District, and if the penalty be not paid and cannot be recovered by such attachment and sale, the party shall be liable to imprisonment by order of the Magistrate or other officer as aforesaid, in the Civil jail, for a period not exceeding six months. *Sec.* 293.

Recovery of penalty from Surety.

Whenever it may be proved before the Magistrate or other officer as aforesaid, that any bond with a surety has been forfeited, the Magistrate or other officer as aforesaid, may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it shuuld not be paid; and if no sufficient cause be shown, and the penalty be not paid, the Magistrate or other officer as aforesaid, may proceed to recover payment of the penalty from such surety in the same manner as from the principal party. *Sec.* 294.

Regarding Contempts and Disobedience of Orders.

When any such offence as is described in Sections 175, 178, 179, 180, or 228, of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, it shall be competent to such Court to cause the offende

peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session, and such Court, after examining the proceedings of the Magistrate or other officer as aforesaid, and making such further enquiry as such court may think necessary, may, if it shall see cause authorize the Magistrate or other officer as aforesaid, to extend the term for a further period not exceeding one year, and if the party shall fail to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate or other officer as aforesaid shall direct under the orders of Court of Session, he may be kept in confinement for such further period, or until he shall give such bond within that period. *Sec. 290.*

Discharge of recognizances.

The Magistrate or other officer as aforesaid, may if he shall see sufficient cause, discharge any recognizance and surety for keeping the peace taken under the preceding section, and may order the release of the person confined for default in entering into such recognizance or given such security. *Sec. 291.*

Discharge of Sureties.

A surety for the personal appearance of another person may at any time apply to the Magistrate or other officer as aforesaid, to be relieved from his engagement as surety. On such application being made, the Magistrate shall issue his sommons or warrant in order that the person for whom such surety is bound, may appear or be brought before him. On the appearance of the person to such warrant or on his voluntary surrender, the Magistrate or other officer as aforesaid shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof shall commit him to custody. *Sec. 292.*

When any person has been sentenced to punishment or forwarded to a M., or J P. for trial, under the last preceding section, for refusing or omitting to do anything which he was lawfully required to do, it shall be competent to the Court to discharge the offender, or to remit the punishment, on the submission of the offender to the order or requistion of such Court. *Sec.* 164

The following are the Sections of the Penal Code alluded to above .—

Omitting to produce a document.

Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the document is to be produced or delivered up to a court of justice, with simple imprisonment for a term which may extend to one thousand Rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same A, has committed the offence defined in this Section. *Penal Code, Sec* 175.

Refusing to be sworn.

Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servent, legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both. *Sec.* 178.

Refusing to answer when questioned

Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any que..

whether he be a E. B. S. or not, to be detained in custody; and at any time before the rising of the court on the same day, to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding two-hundred Rupees, or by imprisonment in the Civil Jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the court, in any case shall consider that a person accused of any offence above referred to shall be imprisoned, or that a fine exceeding two-hundred Rupees should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or if the accused person be a E. B. S to a J. P. and shall cause bail to be taken for the appearance of such accused person before such Magistrate or J. P. or if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such Magistrate or J. P. If the case be forwarded to a M. such M. shall proceed to try the accused person in the manner provided by this Act for trials before a M., and it shall be competent to such M. to adjudge such offender to punishment, as provided in the Section of the Indian Penal Code under which he is charged. If the case be forwarded to a J. P. such J. P. shall enquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the statute 53 George III, C. 155. S. 105, in a J. P. for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said statute. If such J. P. shall consider the offence to require a more severe punishment than a J. P. is competent to award under the said statute, he may commit the offender to a S C. of judicature. In no case tried under this Section shall any M., adjudge imprisonment or a fine exceeding two hundred Rupees for any contempt committed in his presence against his own Court. *C. P. C. Sec.* 163.

the Peace is competent to award under the said statute, he may commit the offender to a Supreme Court of judicature. *C. P. C. Sec.* 165.

The following are the Sections of the Penal Code referred to above :—

Evading the service of a Summons

Whoever absconds in order to avoid being served with a summons, notice, or order, proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred Rupees, or with both; or if the summons, notice, or order is to attend in person, or by agent, or to produce a document in a Court of justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both. *P. C Sec* 172.

Preventing the service of summons &c,

Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both, or, if the summons, notice, order, or proclamation is to attend in person.

demanded of him, touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisionment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both. *Sec* 179.

Refusing to sign a deposition.

Whoever refuses to sign any statement made by him when required to sign that statement by a public servent, legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred Rupees or with both. *Sec.* 180.

Insulting or interrupting a Public Officer in Court

Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment fur a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both. *Sec.* 228.

When any such offence as is described in Chapter X of the Indian Penal Code, except Section 175, 178, 179, and 180, is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court by a European British Subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence as are vested by the Statute 53 George III, C, 155, S, 105 in a Justice of the Peace for the punishment of an assault, and may deal with the offender on conviction, in the same manner as is provided in that behalf in the said Statute. If such Magistrate shall consider the offence to require a more severe punishment than a Justice of

extend to one month, or with fine which may extend to five hundred Rupees or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which extend to six months or with fine which may extend to one thousand Rupees, or with both. *Sec.* 176.

Furnishing false information.

Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees or with both; or, if the information which he is legally bound to give, respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years or with fine, or with both

Illustrations.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate wilfully misinforms the Magistrate of the District that the death has occurred by accident in consequence of the bite of a snake A, is guilty of the offence defined in the Section.

(*b*) A, a village watchman knowing that a considerable body of strangers has passed through his village in order to commit a Dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5 Section 7, Regulation III. 1821 of the Bengal Code to give early and punctual information of the above fact to the officer of the nearest Police Station, wilfully misinforms the Police Officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A, is guilty of the offence defined in the latter part of this Section. *Sec.* 177.

by agent, or to produce a document in a Court of justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both. *Sec.* 173.

Neglecting to appear when summoned.

Whoever, being legally bound to attend in person or by an Agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both, or if the summons notice, order or proclamation is to attend in person or by Agent in a Court of justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Illustrations.

(*a*) A, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court intentionally omits to appear. A, has committed the offence defined in this Section.

(*b*) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear A. has committed the offence defined in this Section. *Sec.* 174.

Omitting to give information.

Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may

reason to believe that he is such public servant, shall be punished with imprisonment of either description, for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both *Sec.* 183.

Obstructing sale of attached property.

Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both *Sec.* 184

Illegal purchase of property sold under legal process

Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both. *Sec.* 185.

Obstructing public servant in his duty.

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred Rs. or with both. *Sec.* 186.

Neglecting to assist a public servant when bound to do so.

Whoever, being bound by law to render or furnish assistance to any Public servant in the execution of his public duty,

Making a fales statenent on oath.

Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. *Sec.* 181.

Giving false information intending to cause injury to another.

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit any thing which such public servant ought not to do or to omit, if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand Rupees, or with both.

Illustrations.

(a) A, informs a Magistrate that Z, a Police Officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z, A, has committed the offence defined in this Section.

(b) A, falsely informs a public servant that Z, has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's, premises attended with annoyance to Z. A, has committed the offence defined in this Section. *Sec.* 182.

Resistance to a legal process of distraint.

Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having

Illustration.

An order is promulgated by a public servant, lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A, knowingly disobeys the order, and thereby causes danger of riot, A, has committed the offence defined in this Section, *Sec.* 188.

Threat of injury to a public servant.

Whoever holds out any threat of injury to any public servant, or to any person in whom he belives that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. *Sec.* 189.

Threat of injury to prevent any person from applying to a Public servant for protection.

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such, to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. *Sec.* 190.

Regarding Offences against the Post Office Act.

Any person, whether a E. B. S. or not, who shall be guilty of any offence for which according to the provisions of this Act,

intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred Rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both. *Sec.* 187.

Disobeying a public order.

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

Explanation. It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm.

All fines imposed under the authority of this Act, for offences punishable by fine only by any J P. Magistrate, J. M. or person lawfully exercising the powers of a M. or by any Assistant to a Magistrate, or D M. may in case of non payment thereof, be levied by distress and sale of the goods chattels of the offender, by warrant under the hand of any of the above named officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise; and if, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months, where the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount. *Sec. 62.*

A share not exceeding one moiety of every fine imposed and recovered under this Act, may be awarded to the informer *Sec. 63*

he shall be liable to a fine only, shall be punishable for such offence by any J. P for any of the Presidency Towns of Calcutta, Madras and Bombay, Magistrate, Joint Magistrate, or person lawfully exersing the powers of Magistrate; and any person hereby made punishable by a J. P. shall be punishable upon summary conviction. *Act XVII of* 1854 *Sec.* 58.

No convicton, order, or judgment of any J. P. shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state on the face of the convicton, order, or judgment, the evidence on which it proceeds, but the depositions taken, or a copy of them, shall be returned with the conviction, order or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken, supply that defect, the conviction order, or judgment shall be aided by what so appears in such depositions. *Sec.* 59.

A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants, or to any Deputy Magistrate lawfully appointed to exercise the powers of a Covenanted Assistant; and in such case every such Assistant or D M. may exercise all the powers vested in a M. subject to all the rules applicable to Criminal cases deputed to such Assistant or D. M. acting judicially. *Sec.* 60.

The Local Government may give general authority to any such Assistant or D. M. to exercise, without reference by a Magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a M. subject to appeal to the M. from any conviction by such Assistant or D. M. within one month from the date of the conviction. Provided, that a M. may at any time, call from any of his Assistants, or from any D. M. subordinate to him, any case pending before such Assistant or D M *Sec.* 61.

Covenanted Assistant, and in such case every such Assistant or D M. may exercise all the powers vested in a M. subject to all the rules applicable to Criminal cases deputed to such Assistant or D. M. acting judicially. *Sec.* 32.

The Local Government may give general authority to any such Assistant or D. M. to exercise without reference by a M. any of the powers which they are hereby rendered competent to exercise upon reference by a M. subject to appeal to the M. from any conviction by such Assistant or D. M. within one month from the date of conviction. Provided that a M. may at any time, call from any of his Assistants or from any D M. subordinate to him, any case pending before such Assistant or D. M. *Sec.* 33.

All fines imposed under the authority of this Act for offences punishable by fine only by any J. P. Magistrate, J. M. or person lawfully exercising the powers of a M. or by any Assistant to a M. or D. M. may in case of non payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above named officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe cutody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction to such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise; and if upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of

No proceedings shall be taken for the recovery of any such fine without an order of Government, or an order in writing of the Director General of the Post Office, or of a Post Master General. *Sec.* 64.

Regarding Offences against the Railway Act.

Any person, whether a E. B. S or not, who shall be guilty of any offence, for which according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any J. P. for any of the Presidency Towns of Calcutta, Madras, and Bombay, Magistrate, Joint Magistrate or person lawfully exercising the powers of a Magistrate, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not, and any person hereby made punishable by a Justice of the Peace, shall be punishable upon summary conviction. *Act XVIII* 1854 *Sec.* 30.

No conviction, order, or judgment of any J. P. shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the *certiorari*, order, or judgment, in obedience to any right of certiorari, and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken, supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. *Sec.* 31.

A. M. may refer for trial and decision any charge of an offence hereby made punishable by fine only to any of his Assistants, or to any D. M. lawfully appointed to exercise the powers of a

Act he shall be liable to a fine only, shall be punishable for such offence by any Magistrate of Police for any of the Presidency Towns of Calcutta, Madras, and Bombay, or for the settlement of Prince of Wales' Island, Singapore, and Malacca, Magistrate, Joint Magistrate, or person lawfully exercising the powers of a Magistrate, within whose jurisdiction the offence shall be committed; and any person, hereby made punishable by a Magistrate of Police, shall be punishable upon summary conviction. *Sec.* 18.

All fines imposed under the authority of this Act, for offences punishable by fine only, by any Police Magistate, Magistate, J M. or person lawfully exercising the power of a M. may in case of nonpayment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above named officers, and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise, and if upon the return of such warrant, it shall appear that no sufficent distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand may commit the offender to prison, there to be imprisoned only or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty Rupees and for any term not exceeding four calendar months where

money could be livied if a warrant of distress were issued, any such officer may, by warrant under his hand, commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor according to the descretion of such officer, for any term not exceeding two calendar months when the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount. *Sec.* 31.

Regarding Offences against the Telegraph Act.

Any person, not being a E B. S. who shall, beyond the local limits of the jurisdiction of a Court of judicature established by Royal Charter, commit any of the offences mentioned in Section X, XI, XII, XIII, XIV, and XV of this Act, shall be punishable upon conviction by any Magistrate within whose jurisdiction the offence shall be committed. If any such offence be committed beyond the said local limits by a E. B. S. the offender shall be punishable upon conviction before a Court of judicature established by Royal Charter. *Act VIII of* 1860. *Sec.* 16.

Any person, whether a E. B. S. or not, who shall, within the local limits of the jurisdiction of a court of judicature established by Royal Charter, commit any of the offences referred to in the last preceding Section, shall be punishable upon conviction before such court. *Sec.* 17.

Any person, whether a E. B. S. or not, who shall be guilty of any offence, for which, according to the provisions of this

any writ of *certiorari* and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. *Sec.* 42.

All other offences punishable under this Act which shall be committed within the local limits of any Court of Judicature established by Royal Charter, shall be punishable by such Court. *Sec.* 43.

All forfeitures or penalties imposed under the authority of this Act for offences punishable by any Magistrate of Police, or by any Magistrate, or person lawfully exercising the powers of a Magistrate, or Assistant Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of any of the abovenamed officers. *Sec.* 44.

In case any such forfeitures or penalties shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer, for his appearance at such place and time as shall be appointed for the return of the warrant of distress. *Sec.* 45.

If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid or in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer may by warrant under his hand commit the offender, provided he is not a E. B. S. to pri there to be imprisoned, according to the discretion of such o

amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. *Sec.* 19.

Regarding Offences against the Arms Act.

If any offence which by this Act is declared to be punishable with fine and imprisonment, or imprisonment only, shall be committed by a E. B S. beyond the local limits of the jurisdiction of Her Majesty's Supreme Court of Judicature, the offender shall be liable, upon conviction before one of the said Supreme Courts of Judicature, to the punishment to which by this Act the offender is declared to be liable upon conviction. *Act XXXI of* 1860, *Sec.* 40.

If any offence which by the Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months shall be committed by any person within the local limits of the jurisdiction of any Court of Judicature established by Royal Charter, such offence shall be punishable upon summary conviction by any Police Magistrate of the Presidency Town or station in which such Court is held *Sec.* 41

No conviction, order, or judgment under the last preceding Section shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment the evidence on which it proceeds, but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment in obedience to

shall not be forthwith paid, or in case it shall appear to the satisfaction of the M. by the confession of the offender or otherwise that he has not sufficient property whereupon such fine or sum of money could be levied if a warrant of distress were issued, the M. may, by warrant under his hand, commit the offender, provided he is not a E. B S to prison, there to be imprisoned, according to the discretion of the M. for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. *Sec.* 39.

If the offender be a E. B. S. the M. shall record the fact and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for execution of decrees of the Civil Court. *Sec.* 40.

Regarding Offences against the Stage Carriage Act.

Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a Stage Carriage, the M. shall issue such summons directed to such proprietor or his nearest Agent, and may transmit such summons by letter post, which shall be deemed to be good service thereof. The letter shall be registered at the Post Office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case. The summons sl allow a reasonable time, in reference to the distance to

for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determiable in each of the cases aforesaid on payment of the amount. *Sec.* 46.

If the offender shall be a E. B. S. the Magistrate shall record the facts, and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decress of the Civil Court. *Sec.* 47.

Regarding Offences against the Police Act.

All forfeitures or penalties imposed under the authority of this Act for offences punishable by a Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the property of the offender within the limits of the jurisdiction of the Magistrate of the District, by warrant under the hand of the Magistrate who made the order. *Act V* 1861 *Sec.* 37.

In case any such forfeiture or penalty shall not be forthwith paid, the M. may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of the M. for his appearance at such place and time as shall be appointed for the return of the warrant of distress, *Sec.* 38

If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same

term not exceeding four calendar months when the amount shall not exceed 100 Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. *Sec.* 18.

If the offender shall be E. B. S. the Magistrate shall record the facts, and transmit such record to the District Court of the District wherein the offender is convicted, and amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court. *Sec* 19.

Regarding Offences Against the Salt Act.

All forfeitures or penalties imposed under the authority of this Act, shall be recoverable by any Magistrate of Police, or by the Magistrate, or other officer exercising the powers of a M. as defined in the Code of Criminal Procedure, and may, in case of non-payment thereof be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above named officers. *Act XXXI of* 1861 *Sec.* 12.

When any penalty is awarded for the breach of the conditions of any license under this Act, or against the holder of any license for any offence under this Act, the Local Government may cancel such license. The officer who convicts the offender may also, on the application of the Commissioner of Customs or the Collector of Customs within whose Jurisdiction the offence is committed, on the officer authorized in that behalf by the Local Government, order the works of such offender at which such offence was committed, to be destroyed *Sec.* 13.

the summons is sent, for the appearance of such proprietor or his Agent as aforesaid. *Act XVI* 1861, *Sec.* 14.

All penalties incurred under this Act, thall be adjudged by a Magistrate or Chief Commissioner of Police as aforesaid and all orders made under this Act by such Magistrate, or Chief Commissioner of Police shall be final. *Sec.* 15.

All penalties imposed under this Act, or any balance of any fine, costs, or charges as mentioned in Section XI of this Act, may in case of non-payment or non-recovery thereof, be levied by distress and sale of the moveable property of the offender, by warrant under the hand of the Magistrate who imposed the same, *Sec.* 16.

In case any such penalties shall not be forthwith paid, such M may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress unless the offender shall give security to the satisfaction of such M. for his appearance at such place and time as shall be appointed for the return of the warrant of distress. *Sec.* 17.

If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such M. by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such M. may, by warrant under his hand commit the offender, provided he is not a E. B. S. to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed 50 Rupees, and for any

Regarding Offences against the Stamp Act.

Every offence punishable by this Act may be tried by any officer exercising the powers of a Magistrate or of a Subordinate Magistrate of the First Class, as defined in the Code of Criminal procedure, or by a J. P, *Act. X of* 1862, *Sec.* 53.

If any person sentenced to a fine under the provisions of this Act, shall not pay the fine to which he shall be sentenced, it shall be lawful for the M. or J P. who passed the sentence, to issue his warrant to levy the amount by distress and sale of the goods and chattels of the party fined, or to sentence the offender to imprisonment until the payment of the fine, or the expiration of a term to be assigned, not exceeding three months, whichever shall first take place. *Sec.* 54.

A share not exceeding one half of every fine imposed and recovered under this Act may be awarded by the Magistrate or Justice of the Peace imposing the fine to the informer. *Sec.* 55.

Regarding Offences committed by E. B. S. attached to the Army.

II. *First.* In modification of the rules contained in Regulation II. 1796, Section XIX. Regulation VI. 1803, and Regulation XV 1806, it is hereby provided, that if any E. B S. who shall be apprehended by or brought before a Magistrate on a charge of murder, rape, robbery theft, or other Criminal offence, shall be found, on his apprehension, to have been, at the time when the offence laid to his charge may have been committed,

In case any penalty awarded under this Act, shall not be forthwith paid, the officer by whom such penalty is awarded may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer, for his appearance at such place and time as shall be appointed for the return of the warrant of distress. *Sec.* 14.

If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer may by warrant under his hand, commit the offender, provided he is not a E. B. S. to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of fine shall not exceed Fifty Rupees, and for any term not exceeding four calendar months, when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. *Sec.* 15.

If the offender shall be a E. B. S. the M. shall record the facts and transmit such record to the District Court of the District wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court. *Sec.* 16.

said Act of Parliament, to transmit to the Magistrate of the Zillah or City within whose jurisdiction persons whose attendance before such court-martial is required may reside, any warrant, summons, or other process, for the attendance of such person; and it shall be the duty of such Magistrate, who may be so applied to, to give his assistance and that of the officers under him in the due execution of such process, and generally to aid and assist in the execution of all processes issued by such courts-martial.

Fourth. The several Zillah and City Magistrates are hereby prohibited from receiving and enquiring into any criminal charge of the nature described in Section II, of Statute IV Geo IV Cap. LXXXI, which may be preferred to them against any British commissioned or non-commissioned officer, soldier or other person attached to the army, who may have been regularly brought to trial under the provisions of the said Act, and acquitted or convicted by the sentence of a court-martial of such offence; provided however, that in any case wherein it may be ascertained by the Magistrate, on due inqury, that any person accused of such Criminal offence, who may be subject to trial by court-martial, has not been brought to trial for such offence before a court-martial, and that no effectual proceedings have been taken, or have been ordered to be taken, against him, then and in that case, it shall be the duty of the Magistrate to report the circumstance for the information and orders of the G. G in Council, who, if it appear to him proper so to do, will direct the case to be proceeded upon in the ordinary course of law, and the Magistrate, if so authorized, shall be competent to proceed against the offender under the provisions of the Regulations hitherto in force.

Fifth. Provided always, and it is hereby declared, that nothing contained in the foregoing clauses shall be held to restrict the Magistrates of districts, either in their ordinary capacity of Magistrates, or as His Majesty's J. P. duly qualified,

a commissioned or non-commissioned officer, or soldier, serving with any body of troops in the service of Her Majesty or the honorable E. I. C. at any place not within the territories subject to the presidency of Fort William, or at any place within such territories which may be situated above one hundred and twenty miles from the aforesaid presidency, or to have been, when the offence was committed, a person attached to such body of troops in any of the capacities specified in Section XLV and LX of statute IVth Geo. IV Cap. LXXXI, it shall be the duty of the Magistrate by whom such person so accused may be apprehended, instead of proceeding to hear evidence to the charge as directed in such cases in the Regulations above mentioned, to deliver over such person so charged, together with a statement of the charge brought against him, to the Commanding Officer of the regiment, corps, or detachment to which such accused person shall belong, or to the Commanding Officer of the nearest Military Station, for the purpose of his being brought to trial before a Court Martial under the provisions of the said Act of Parliament.

Second. It shall further be the duty of every Magistrate, on written application being made to him for that purpose by the Commanding Officer of any regiment, corps, or detachment stationed or employed as specified in the preceding clause, to use his utmost endeavour for the apprehension of any British officer, non-commissioned officer, soldier, or other person of the description therein alluded to, who may have been charged with the crime of murder, rape, robbery, theft, or other Criminal offence, and also to give his assistance, and that of the officers under his control, in securing the person so accused.

Third. It is hereby declared, that it shall be competent to the judge-advocate general or deputy judge-advocate, or other person appointed to conduct the proceedings of any court-martial assembled for the trial of offences under the provisions of the

England, or using violence, or committing any offence against the person or property of any subject of Her Majesty or any other person entitled to Her Majesty's protection, or to the protection of the respective Governments of the E. I. Company, or any State in alliance with the said Company, within the territories of any foreign State, or in any country under the protection of Her Majesty, or the said Company, or at any place in the territories under the Government of the said Company, situated above 120 miles from the said Presidencies respectively. *Ibid.*

The following opinion given by the Advocate General regarding the amenability of British officers and soldiers to Magistrates under the statute 53 Geo. III Chap. 155, with reference to the provisions of Act 4 Geo. IV Chap 81 and Reg. XX. of 1825, was published for general information.

Opinion. The statute 4 Geo. IV Chap. 81, although it repealed the next or 106th Section of the statute 53 Geo. III Chap. 155 leaves the 105th Section unrepealed, and the Reg. XX of 1825, which was enacted by a subordinate legislature, and in my opinion solely with the view of carrying out the provisions of the statute 4 Geo. IV Chap. 81, cannot in any way affect the operation of the statute 53 Geo III Chap. 155.

The statute 4 Geo IV Chap. 81, has been amended, and re-enacted by successive enactments 3 and 4 Vic Chap. 37 and the 12th and 13th Vic. Chap. 43. Under the latter Acts the same power as was formerly conferred upon Courts-Martial, distant more than 120 miles from the Presidency, has been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law, a provision which leaves the jurisdiction of the Magistrate under the statute 53, Geo. III Chap. 155, and Act No. V of 1818, and of the Supreme Courts wholly untouched.

With respect to offences committed by British officers and soldiers, and not falling within the terms of the statute 53 Geo. III, or Act V of 1818, I am of opinion that they are only cognizable by the Supreme Courts and by courts-martial, both of which courts appear to me to have concurrent jurisdiction over British officers resident beyond 120 miles from the Presidency. *S. N. A. 31st August 1852, No. 949.*

The following extract from a letter, addressed to the Court by the Advocate General with reference to the scope of Acts III and IV Victoria, chapter 37 is published for general

from proceeding under the rules heretofore in force against all British subjects charged with criminal offences who may not be attached to the army, or subject to be tried for such offences by court-martial.

Sixth. It is hereby further declared that the provisions of this Regulation, as far as the same relate to criminal offences committed by any commissioned or non-commissioned officer, soldier, or other person attached to the army, being British subjects, shall not be held to apply or be in force when such offences shall be committed by persons of the above description, attached to any body of troops which may be stationed in the garrison of Fort William, or at Barrackpore, Mednapore, Dum Dum, or at any other place within the territories under the presidency of Fort Willam, which may not be situated at a greater distance than 120 miles from the said presidency ; and in all such places, the powers and authorities vested by law in the Magistrates and Justices of the Peace shall continue to be and remain in full force and effect. *Reg. XX* 1825.

THE persons referred to above are the following ; all officers and persons serving and hired to be employed in the Artillery and in the several trains of Artillery, and in the department of the Engineers, and in the corps of Enginers, and as Military Surveyors or Draftsmen, or in the corps of Sappers and Miners or Pioneers and all persons under the ordnance, and all Apothecaries, Veterinary Surgeons, Medical Storekeepers, Hospital Stewards, and others serving on the Medical establishment of the Army, licensed sutlers and followers, all officers and persons commissioned or employed in the Commissariat department, or as Storekeepers, and all Civil Officers under the ordnance, and all placed under the command of any general or other officer. *Stat.* 4 *Geo. IV. Cap.* 81.

THE Criminal Acts alluded to are wilful murder, theft, robbery, rape, or any other crime which is capital by the laws of

And be it enacted, that the provisions of this Act shall apply to all officers and persons who are, or shall be serving and hired to be employed, or who shall serve and be hired to be employed, in the Artillery, and in the several trains of Artillery, and all conductors of stores, and in the department of Engineers, and all officers serving or who shall serve in the corps of Engineer, and all officers and persons serving or who shall serve as Military Surveyors or drasftsmen, or in the corps of sappers and miners, or pioneers, and all persons who now are or shall be in the ordnance and Commissariat Department and all Apothecaries, Veterinary Surgeons, Medical Storekeepers, Hospital Stewards, and others serving in the Medical Establishment of the Army, licensed sutlers and followers, and storekeepers and other Civil Officers employed under the ordnance, shall be at all times subject to all the penalties and punishments mentioned in this Act, and shall in all respects whatsoever be holden to be within the intent and meaning of every part of this Act. *Sec* 40.

The Magistrates of Benares, Allahabad, Cawnpore, Meerut and Agra, and Superintendent of Dehra Doon, and their successors, together with the Joint Magistrates appointed to the above stations for the time being, are empowered, in accordance with an order of Her Majesty in Council, dated the 7th January 1850, in their capacity of Justices of the Peace, as soon as they shall have qualified themselves to act in that capacity, to enlist and attest any soldiers or persons desirous of enlisting or re-enlisting into the service of Her Majesty, her heirs and successors agreeably to the provision of Her Majesty's warrant under the new Mutiny Act.

The above officers are likewise empowered to enlist and attest soldiers or other persons desirous of re-enlisting or re-attesting into the service of the H. E. I. C.—*Govt. January 29th* 1851.

I am of opinion that the 40th Section of the 3rd and 4th Victoria, chapter 37, limits the operation of the statute to the parties specified in that section, and that persons not belonging to any of the classes of persons mentioned in the 40th Section are not punishable under the 36th Section. This construction is somewhat strengthened by the 11th clause, which shows that the parties (without any exception being mentioned) intended to be tried and punished under the Act are the parties subject to its provisions according to the 40th Section.

It is possible that this construction may not be consistent with the intention of those who framed the statute, but I can put no other construction on the enactment, which being of a penal nature, must be construed strictly.

The new mutiny Act of the East India Company's forces, (statute XII and XIII Victoria, chapter 43) although it re-enacts with alterations almost all the clauses of the 3rd and 4th Victoria, chapter 37, does not alter, re-enact, or repeal the 36th Section of that statute. *S. N. A. February 1st 1851, No. 86.*

And be it enacted, that any person who shall unlawfully have in his or her possession or keeping, or who shall knowingly detain, buy, exchange or receive from any soldier or Deserter, or any other person, on any pretence whatsoever, or shall solicit or entice any soldier, or shall be employed by any soldier knowing him to be such, to sell any arms ammunition, clothes, or military furniture or any provisions or any sheets or other articles used in barracks, provided under barrack regulations, or regimental necessaries, or any article of forage provided for any horses belonging to the service, or shall change the colour of any clothes as aforesaid, shall forfeit for every such offence any sum not exceeding forty Company's Rupees, (one moiety to be paid to the informer) together with treble value of all or any of several articles of which such offender shall so become possessed; and if any credible person shall prove on oath or solemn declaration before a Magistrate or person exercising the like authority a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description herein before described on or with respect to which any such offence shall have been committed, the Magistrate or person exercising like authority may grant a warrant to search for such property as in case of stolen goods. *3 and 4 Vic chap. 37 Sec. 36*

I have been informed by the Secretary of State for War that references have of late been made from India to his Department as to the course to be pursued in the case of Soldiers of Her Majesty's European Regiments apprehended as deserters, and I have therefore to request that you will cause the attention of the Civil Authorities at the several Presidencies to be directed to the provisions of the 34th Clause of the Mutiny Act, which governs such cases.

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27 Victoria Cap, 3.

Clause 34—Upon reasonable suspicion that a Person is a Deserter, it shall be lawful for any Constable, or if no Constable can be immediately met with, then for any Officer or Soldier in Her Majesty's Service, or other Person, to apprehend or cause to be apprehended, such suspected Person, and forthwith to bring him or cause him to be brought, before any Justice living in or near the Place where he was so apprehended, and acting for the County or Borough wherein such Place is situate, or for the County adjoining such first mentioned County or such Borough, and such Justice is hereby authorized and required to enquire whether such suspected Person is a deserter, and from Time to Time to defer the said inquiry and to remand the said suspected person in the manner prescribed by an Act passed in the Eleventh and Twelfth Years of the Reign of Her present Majesty, Chapter Forty-two, Section Twenty-one, and subject to every Provision therein contained, and if it shall appear to the satisfaction of such Justice by the Testimony of one or more witnesses, taken upon Oath, or by the confession of such suspected Person, confirmed by some corroborative Evidence upon Oath or by the knowledge of such Justice, that such suspected Person is a Deserter, such Justice shall forthwith cause him to be conveyed in Civil Custody to the Head Quarters or Depôt of the Regiment or Corps

Regarding the apprehension of European Soldiers desertion from H. M's. Regiments.

The following papers were published by the Sudder Court for the information and guidance of all Criminal Authorities, indicating the course to be pursued in the case of Soldiers of Her Majesty's Regiments apprehended as deserters.

From Junior Secretary to Government North-Western Provinces to S. N. A.—Dated 25th January 1865.

I am directed to forward to the Court of Nizamut Adalut, the accompanying copy of a despatch No 352 dated the 16th of November last, from the Right Honorable the Secretary of State for India, to the address of His Excellency the Governor General in Council, together with copy of the 34th Clause of the Mutiny Act therein referred to which lays down the course to be pursued in the case of soldiers of Her Majesty's European Regiments apprehended as deserters, and to request that the Court will issue a Cricular on the subject.

Extract from the Proceedings of His Excellency the Governor General in Council, in the Military Department—No. 1115 *under date the 29th December* 1864.

From the Right Honorable Sir Charles Wood Bart. G. C. B. Her Majesty's Secretary of State for India, to His Excellency the Right Honorable the Governor General of India in Council No. 352 dated India Office, London, the 16th November 1864.

Fee of Two Shillings, and also upon the Production of a Receipt from the Medical Practitioner who, in the Absence of a Military Medical Officer may have been required to examine such suspected Person, a Fee of two shillings and sixpence, and shall notify the Fact to the Secretary of State for the War Department, and transmit also to the said Secretary of State, a copy of the commitment, to the end that such Secretary of State may order Repayment of such Fees; and when any such Person shall be apprehended and committed as a Deserter in any Part of Her Majesty's Foreign Dominions, the Justice shall forthwith cause him to be conveyed to some public Prison, if the Regiment or Corps to which he is suspected to belong, shall not be in such Part, or, if the Regiment or Corps be in such Part, the Justice may deliver him into Custody at the nearest Military Post if within reasonable Distance, although the Regiment to which such Person is suspected to belong may not be stationed at such Military Post; and such Justice shall in every case transmit to the General or other officer Commanding, a Descriptive Return in the Form prescribed in the Schedule to this Act annexed, to the end that Person may be removed by order of such officers, and proceeded against according to Law; and such Descriptive Return, purporting to be duly made and subscribed in accordance with the Act shall in the Absence of Proof to the contrary, be deemed sufficient Evidence of the Facts and Matters therein stated. Provided always, that any such Person so committed as a Deserter in any part of Her Majesty's Dominions shall, subject to the Provisions herein after contained be liable to be transferred by order of the General or other officer commanding to serve in any Regiment or Corps or Depôt nearest to the place where he shall have been apprehended, or to any other Regiment or Corps to which Her Majesty may deem it desirable that he should be transferred, and shall also be liable after such Transfer of service to be tried and punished as a Deserter. *S N. A. 11th February* 1865, *No.* 2.

which he belongs, if stationed within a convenient and easily accessible Distance from the Place of Commitment, or if not so stationed, then to the nearest or most convenient public Prison (other than a Military Prison set apart under the Authority of this Act) or Police Station legally provided as a Lock-up House for temporary confinement of persons taken into custody, whether such Prison or Police Station be in the County or Borough in which such suspected Person was apprehended or in which he was committed or not; or if the Deserter has been apprehended by a party of Soldiers of his own Regiment or Corps in charge of a Commissioned Officer, such Justice may deliver him up to such Party, unless the Officer shall deem it necessary to have the Deserter Committed to Prison for safe Custody; and such Justice shall transmit an Account of the Proceedings, in the Form prescribed in the Schedule annexed to this Act, to the Secretary of State for the War Department, specifying therein whether such Deserter was delivered to his Regiment or Corps, or to the Party of his Regiment or Corps in order to his being taken to the Head Quarters or Depôt of his Regiment or Corps, or whether such Deserter was committed to Prison, to the end that the Person so committed may be removed by an order from the Office of the said Secretary of State, and proceeded against according to Law; and such Justice shall also send to the said Secretary of State a Report stating the names of the Persons by whom, or by or through whose Means, the Deserter was apprehended and secured; and the said Secretary of State shall transmit to such Justice an order for the Payment to such Person of such sum not exceeding Forty Shillings as the said Secretary of State shall be satisfied they are entitled to according to the true intent and Meaning of this Act, and for such Information, Commitment, and Report as aforesaid, the Clerk of the said Justice shall be entitled to a Fee of Two Shillings and no more; and every Gaoler and other Person into whose Custody any Person charged with Desertion is committed, shall immediately, upon the Receipt of the Person so charged into his Custody, pay such

I do hereby certify that the prisoner has been duly examined before me as to the circumstance herein stated, and has declared in my presence that he † a deserter from the abovementioned corps.

————Signature and address of Magistrate.

————Signature of Prisoner

————Signature of Informant

† Insert "is" or "is not," as the case may be.

I certify that I have inspected the prisoner and consider him ‡ for Military Service.

————Signature of the Military Medical Officer, or Private Medical Practitioner

‡ Insert "fit" or "unfit, as the case may be; and if unfit, state the cause of unfitness

No fee will be allowed to a private Medical Practitioner, where a Military Medical Officer is stationed, unless it is shown that his services were not available.

S. N. A. 29th April 1865, *No* 7,

POWERS OF JUSTICE OF THE PEACE.

Declaration to be subscribed by J. P.

ALL persons who are, or shall be nominated and appointed in any Commission of the Peace, shall be capable of acting as J P in every respect according to the terms of such Commission, upon making and subscribing before any other Justice of the Peace or the Chief Civil Officer of any Station within the places in and for which any such Commission shall have issued, declarations to the following effect —

"I declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria."

"*I declare that I will truly and faithfully* discharge the Office of a Justice of the Peace."

The subscriptions of such persons to the said declarations shall be deposited and kept with the records in the Home

European Soldiers' Descriptive Return.

In continuation of their Circular order No 2, dated 11th February last, relative to the course to be pursued in the case of Soldiers of Her Majesty's European Regiments apprehended as deserters, the Court are pleased to publish, for the information of all Criminal Authorities, the annexed Form of the Descriptive *Return to be forwarded to the General or other officer* commanding, as directed in clause 34 of the Mutiny Act.

Descriptive Return of———————who was apprehended (or "surrendered himself." as the case may be) on the——day of——and was committed to confinement at———on the—day of——as a Deserter from (insert Regiment or corps.)

Age	
Height	feet inches
Complexion.	
Hair.	
Eyes.	
Marks.	
Probable date of enlistment, and where.	
Probable date of desertion, and from what place.	
Name and occupation and address of the person by whom, or through whose means, the deserter was apprehended and secured,	
* Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds.	

* *It is important for the Public Service, and for the interest of the deserter, that* this part of the Return should be accurately filled up and the details should be inserted by the Magistrate in his own hand writing, or under his direction by his Clerk

the special cause on which it is granted, *viz*: that the party "stands charged with an offence." A warrant "to the like effect" under Sec: 188 should contain a recital that "A. B, who was required to give evidence as a witness in a case against—— —— had absconded" or was "likely to abscond," or under Sec: 191 "had been summoned and omitted to attend." A strict adherence to the form of warrants of arrest prescribed by the Code of Criminal Procedure will tend to prevent their being granted irrigularly and without enquiry as to whether the circumstances justify their issue.

3. Secondly, the officers of your Court should be informed that witnesses brought up under Sec: 188 and 191 should not oe treated as Criminals, and put in irons, but simply as persons arrested on Civil process.

By Order of the High Court.

(Signed) F. B. PEACOCK,

Offg. Registrar.

WHERE any person is taken on a charge of felony, or suspicion of felony, before a J P. at any place beyond the local limits of the jurisdiction of any of Her Majesty's Courts of Justice erected or to be erected within the British territories under the Government of the E. I C, and the charge is supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, raises in the opinion of the Justice a strong presumption of the guilt of the person charged, such person is to be committed to prison by such Justice in the manner hereinafter mentioned; but if the evidence given in support of the charge is not in the opinion of the Justice such as to raise a strong presumtion of the guilt of the person charged, and to require his or her committal, or such evidence is adduced on behalf of the person charged as in his opinion weakens the presumption of his or her guilt, but there notwithstanding appears to him in either of such cases to be sufficient ground for judicial inquiry into his or her

Department of the office of the Secretary to the Government in the province wherein such declarations shall have been made. *Act. XXVII of* 1864.

No person who is not a Justice of the Peace shall commit, or hold to bail, any European British Subject to take his trial before a Supreme Court of Judicature. *C. P. C. Sec.* 39.

Warrant of Arrest.

The court are pleased to promulgate for the information and guidance of all Justices of the Peace in these Provinces, the accompanying copy of a Circular No. 21, dated the 22nd of November last, issued by the High Court, Fort William, containing instructions for the guidance of Justices of the Peace, regarding the form of warrants of arrest prescribed by the Code of Criminal Procedure.

2. The court direct that a copy of the circular order be supplied to each J P. in the several districts of these Provinces. *S N A 13th February* 1865, *No* 3

A case having been recently brought to the notice of the Officiating Chief Justice, in which a person who should have been simply, summoned as a witness, had, without any sufficient cause, been arrested under a warrant issued by a J. P. under the provision of Sec. 188, Code of Criminal Procedure, and who after his arrest had in put in irons, it appears to His Lordship desirable to call your attention to the necessity of stating, as shortly, as possible, in every warrant, the special matter on which it proceeds

2. By Sec 76 of the Code of Criminal Procedure every warrant is to be in the form B given in the Appendix, or to the like effect. Form B. in the Appendix expresses on the face of it

principal felon although the offence be committed on the seas or abroad. If the offence be committed in different places, the accessary may be tried in any of the Queen's Courts in India having jurisdiction.—*Sec* : 7.

Accessary after the fact may be tried by any court which has jurisdiction to try the principal felon. If the offence be committed in different places, Accessary may be tried in any court having jurisdiction, *Sec.* 8.

Accessary may be prosecuted after conviction of the principal, though the principal be not attained —*Sec.* 9.

In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.—*Sec* . 10

Aiders and abetters in offences, punishable by Justice on summary conviction —*Sec* : 39.

A person may be apprehended in the act of committing an offence A Justice upon good grounds of suspicion may grant a search Warrant. A person to whom property suspected to be stolen &c, is offered, may seize the party offering.—*Sec* . 40.

Summary proceedings are to be commenced within three months after the commission of the offence and not otherwise; and the evidence of the party aggrieved is to be admitted in proof of the offence.—*Sec* : 41.

Where any person is charged on the oath of a credible witness before any J P. with any such offence, the Justice may summon the person charged to appear at a time and place to be named in such summons, and if he does not appear accordingly, then upon

guilt, the person charged is to be admitted to bail by such Justice in the manner hereinafter mentioned: provided always, that nothing herein contained is to be construed to require any such Justice to hear evidence on behalf of any person so charged as aforesaid, unless it appears to him to be meet and conclusive to the ends of justice to hear the same. *9 Geo: IV. Cap. 74 Sec. 2.*

Before any person charged with felony is bailed or committed, the Justice is to take down in writing the Examination &c., and to bind witnesses to appear at the trial. Examination &c. to be delivered to the Supreme Court—*Sec*: 3.

Every J. P. before whom any person is taken on a charge of misdemeanor, or suspicion thereof, is to take the Examination of the person charged, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same or as much thereof as is material into writing before he commits to prison or requires bail from the person so charged; and in every case of bailment is to certify the bailment in writing and has authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and is to subscribe all Examinations, informations, bailments, and recognizance, and to deliver *or cause the same to be delivered, to the proper Officer of the* Court in which the trial is to be, before or at the opening of the Court, in like manner as in cases of felony.—*Sec*: 4.

If any Justice offends in any thing contrary to the true intent and meaning of these provisions, the Court to whose Officer any such Examination, information, evidence, bailment recognizance or inquisition ought to have been delivered, is upon Examina*tion and proof of the offence, in a summary manner, to set such* fine upon every such Justice as the Court thinks meet.—*Sec. 6.*

Accessary before the fact may be tried as such, or as a substantive felon, by any Court which has jurisdiction to try the

and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the casesafóresaid upon payment of the amount with costs. *Sec.* 44.

The Justice may discharge the party from his conviction upon his making such satisfaction to the party aggrieved for damages and costs or either of them, as is ascertained by the Justice. *Sec*: 45.

A summary conviction is a bar to any other proceeding for the same cause,—*Sec* 46.

The Justice before whom any person is convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words or in any other form of words, to the same effect, as the case may require.—*viz.*

Be it remembered that on the———day of——in the year of our Lord———at———(*as the case may be*) A, O, is convicted before me J. P. Magistrate of———and one of Her Magisty's Justices of the Peace, for that he the said A. O. did (*specify the offence and the time and place when and where the same was committed as the case may be, and on a second conviction, state the first conviction*), and I the said J P. adjudge the said A. O. for the said offence to be imprisoned in the———(or to be imprisoned in the———and there kept to hard labor) for the space of———or I adjudge the said A. O for his said offence, to forfeit and pay———(*here state the penalty actually imposed, or state the penalty, and also the value of the articles stolen or the amount of the injury, as the case may be*) and also to pay the sum of———for costs; and in default of immediate payment, of the said sums to be imprisoned in the———(*or*, to be imprisoned in the——— and there kept to hard labor) for the space of———unless the said sums shall be sooner paid (*or*, and I order that the

proof of the due service of the Summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode, the Justice may either proceed to hear and determine the case *exparte* or issue his Warrant for apprehending such person and bringing him before himself or some other J P. or the Justice before whom the charge is made may, if he so think fit, without any previous summons, unless where otherwise specially directed, issue such Warrant and the Justice before whom the person charged appears or is brought, is to proceed to hear and determine the case.—*Sec* : 42.

Every sum of money which is forfeited for the value of any property stolen or taken, or for the amount of any injury done, such value or amount to be assessed in such case by the convicting Justice is to be paid to the party aggrieved if known, except where such party has been examined in proof of the offence, or when the party aggrieved is unknown, such sum is to be applied in the same manner as the penalty; provided always that where several persons join in the commission of the same offence, and are upon conviction thereof, each adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no farther sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders are to be applied in the same manner as any penalty imposed by a J. P. is herein directed to be applied —*Sec:* 43.

If a person summarily convicted does not pay &c. the Justice may commit him. Scale of imprisonment; any term not exceeding two calendar months where the amount of the sum forfeited or of the penalty imposed, or of both, as the case may be, together with the costs does not exceed fifty sicca rupees; and for any term not exceeding four calendar months where the amount with costs does not exceed one hundred sicca rupees;

Shipwrecked goods offered for sale may be seized, and the fact reported to some Justice of the Peace, who will cause the goods to be delivered up to the owner, upon payment of a reasonable reward ; and the offender to forfeit and pay over and above the value of the goods merchandize or articles such sum of Money, not exceeding two hundred Rupees, as to the Justice seems meet *Sec.* 92.

Stealing dogs or beasts, or birds kept in confinement. First offence, to be fined 200 Rupees over and above the value of the thing stolen. And if any person so convicted is afterwards guilty of any of the said offences, such offender is to be committed to the common jail or house of correction, there to be kept to hard labor for such term not exceeding twelve calendar months, as the convicting Justice thinks fit.—*Sec.* 97.

Receivers of stolen property where the original offence is punishable summarily, are punishable as original offenders.—*Sec*: 113.

Breaking down the dam of a fishery &c. offender is to forfeit and pay over and above the amount of the injury done, such sum of money, not exceeding fifty sicca rupees, as to the Justice seems meet.—*Sec*: 121.

Malice against the owner of the property not essential to the offence —*Sec* . 124.

Stealing the whole or part of any growing tree &c. or of any pale post, or stile, or any growing cultivated plant &c. or maliciously injuring any real or personal property. First offence, fine 50 Rs. in addition to value; subsequent offence, 6 months imprisonment. *Act XXXI*, 1838. *Sec*: 29.

said sums shall be paid by the said A. O. on or before the ——————day of————) and I direct that the said sum of——————(i. e. the *penalty only*) shall be paid to———— of————aforesaid, in which the said offence was committed, to be by him applied according to the direction of the statute in that case made and provided; (*or*, that the said sum of ————*i. e. the penalty*, shall be paid to &c. as before) and that the said sum of——————(*i. e. the value of the articles stolen, or the amount of the injury done*) shall be paid to C. D. (*the party aggrieved, unless he has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty, as before.*) Given under my hand and seal, the day and the year first above mentioned.—*Sec*: 47.

Every J. P. before whom any person is convicted of any offence against this Act, is to transmit the conviction to the next Court of general or quarter Sessions, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence a copy of such conviction certified by the proper officer of the Court, or approved to be a true copy is to be sufficient evidence to prove conviction for the former offence, and the conviction is to be presumed to have been unappealed against until the contrary be shown. *Sec*: 50.

Having in possession more than five pieces of counterfeit coins without lawful excuse; punishable with fine, or three months imprisonment. *Sec.* 75.

Persons in possession of shipwrecked goods not giving a satisfactory account Goods to be delivered up to owner, and offender is to pay and forfeit over and above the value of the Goods, merchandize or articles, such sum of money not exceeding two hundred Sicca Rupees, as to the Justice seems meet. *Sec.* 91.

of the said High Court, whether within or without the Bengal Division of the Presidency of Fort William, other than the usual place of sitting of such Court, or at several such places by way of circuit, and the G. G. of India in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court of judicature at Fort William in Bengal in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of such High Court, to the provisions contained in the twenty-eighth and following sections of this Act. *Act XIII of* 1865. *Sec.* 22.

The High Court may allot to a Judge or Judges acting under a Commission as aforesaid, such part of the extraordinary original Civil jurisdiction, and of the Civil and Criminal Appellate jurisdiction and of the jurisdiction as a Court of revision or reference, which it is competent to exercise at its usual place of sitting, as the High Court may consider can be more conveniently exercised at any place or places mentioned in such commission. *Sec.* 25.

Every commission issued as aforesaid under any of the preceding Sections, shall specify the time during which and the Districts or places within which such Commission shall remain in force; and such time and the limits of such Districts or places shall be notified in the Official Gazette. *Sec.* 26.

The G. G. in Council or the Governor of Madras or of Bombay in Council, as the case may be, may, by such Commission as

Every sum of money which is forfeited for the amount of any injury done, such amount in each case to be assessed by the convicting Magistrate or J. P. is to be paid to the party aggrieved if known, except when such party has been examined in proof of the offence. In case of the non payment of any forfeiture or penalty for such offence, the Magistrate or Justice may award a term of imprisonment. *Sec.* 30.

If the forfeiture is realized from several, the amount forfeited by one only is to be paid to the party aggrieved. *Sec* 31.

Summary conviction for such offence is a bar to any other proceeding for the same cause. *Sec.* 32.

Malice against the owner of the property not essential to the offence. *Sec.* 33.

It is not necessary in any proceeding, either for theft or for malicious injury, spoil or damage, to, or upon any property dedicated to public use or ornament, to allege the same to be the property of any person. *Sec.* 34.



Regarding the trial of E. B. S. by the High Court sitting under a Commission in the Mofussil.



From and after the commencement of this Act, whenever it shall appear to the G. G. of India in Council convenient that the jurisdiction and power vested in the High Court, Fort William in Bengal shall be exercised in any place within the jurisdiction of any Court now subject to the Superintendence

tried, the notice by this Section directed to be given to the Clerk of the Crown shall be given, and the documents directed to be sent to the Clerk of the Crown shall be sent, to the Clerk of the Crown with the Judge of the High Court acting under the Commission. Such Judge shall have all the powers given to the High Court by this and the next succeeding Section. *Sec*: 28.

The charge whether it shall or shall not have been amended, altered or added to under the last preceding Section, shall, if the person charged be directed to be tried at a place other than the usual place of sitting of the Court have the same effect as a charge under the thirteenth Chapter of the Code of Criminal Procedure, and the person charged shall be tried thereon before a Judge of the High Court whether sitting by himself or with an Associate Judge. But if, at any time before the High Court shall have directed where the trial of the person charged shall take place, the charge appear to the High Court to be clearly unsustainable, an entry to that effect may be made by the proper Officer of the Court at any time before the commencement of the trial Such entry shall have the effect of staying proceedings on the charge, but shall not operate as an acquittal of the person charged unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted. If the person charged be directed to be tried at the usual place of sitting of the Court, the charge whether amended altered, or added to as last aforesaid or not, shall have the same effect as, and be deemed to be, a charge under the sixth, seventh and eight sections of this Act. *Sec.* 29.

Pending the directions of the High Court as to the place of trial, every such British Subject as is referred to in the twenty eight Section of this Act shall (if not out on bail) be committed

aforesaid, associate with such Judge of the High Court any Barrister-at-law of not less than five years standing, or any Sessions Judge. The person so associated shall be called the Associate Judge, and, unless directed to try persons separately as hereinafter provided, may sit with the Judge of the High Court during the trials of persons tried under such Commission Whenever any Associate Judge sits with the Judge of the High Court, the latter shall preside, conduct the case, and pronounce judgment *Sec.* 27.

Any J P. or M. without the local limits of the ordinary original Civil Jurisdiction of the High Court, before whom any E. B. S. shall be brought for an offence committed without those limits, shall, immediately after the conclusion of the preliminary enquiry, and if he shall determine to commit or hold to bail such person for trial, give notice thereof to the High Court to which the commitment or bailment would ordinarily be made, and shall send to the Clerk of the Crown, together with the record of the preliminary enquiry, and translations into English of any writings not in that language, a written instrument of charge signed by him stating for what offence such person is committed or held to bail. On receipt of these documents, the Clerk of the Crown shall proceed as directed in the like case in the fourth section, and the person charged shall be entitled to copies in like manner as he would be entitled to copies under the fifth section, of this Act. If a Commission under which the person charged might be tried shall have been issued, the High Court shall consider at what place the person charged can be most conveniently tried, and shall give directions accordingly; if no such Commission shall have been issued, the High Court shall obtain information from the Government as to whether such Commission is about to issue, and shall then give such directions as last aforesaid. Provided always that, if the commitment or bailment have been made after the issue and during the running of a Commission under which the person charged might be

shall be tried at any place other than its usual place of sitting, the Judge of the High Court acting under such commission as aforesaid, in the place and manner therein mentioned, shall, whether sitting by himself or with the Associate Judge, have and excercise in respect of such E. B. S. the same jurisdiction, power, and authority which would be had and exercised by the High Court at its ordinary place of sitting if the said E. B. S. had been committed or bailed to the said High Court at its ordinary place of sitting for the offence with which he is charged. But the trial of the said E. B S. before such Judge of the High Court acting under such Commission as aforesaid, and whether sitting by himself or with the Associate Judge, shall, subject to the exceptions hereafter declared, be conducted in accordance with the rules and provisions contained in the Code of Criminal Procedure, and thereby made applicable to trials of persons committed or bailed for trial before the Court of Session for offences triable by such Court. *Sec.* 32.

The Judge of the High Court acting under such Commission in the place and manner therein mentioned, and whether sitting by himself or with the Associate Judge, shall, if he shall think fit, have and exercise the same jurisdiction, power, and authority in respect of any person committed or bailed for trial under the Code of Criminal Procedure before the court of session at the place and within the time in such Commission mentioned, as might be had and exercised by the Court of Session to which such person was committed or bailed. The trial of such person shall be conducted, subject to the exceptions hereinafter declared, in accordance with the rules and provisions contained in the Code of Criminal Procedure, and thereby made applicable to trials before a Court of Session of persons committed or bailed *to such Court for offences triable by the same.* *Sec.* 33.

All trials before a Judge of the High Court acting under such Commission as aforesaid, and whether sitting by himself or with the Associate Judge, shall be by jury. *Sec.* 34.

by the J. P. or M. for intermediate custody to the nearest Criminal Jail in which he can be most conveniently confined. If the trial shall be directed to take place in the usual place of sitting of the Court, the J. P. or M. shall bind over the person charged to appear and take his trial at such usual place of sitting, or shall commit him to the jail at such place. If the High Court shall direct that the person charged be tried elsewhere than in its usual place of sitting, the J. P. or M, shall bind him over to appear and take his trial in the place directed, or (as the case may be) shall, if necessary, cause him to be removed to the Criminal Jail of or nearest to the place at which such person is directed to be tried, and the officer in charge of such criminal jail shall keep such person in safe custody until discharged in due course of law. *Sec.* 30.

It shall be lawful for the High Court to direct that all E. B. S. committed or bailed for trial within certain specified Districts or during certain specified periods of the year, shall be tried at the usual place of sitting of the court, or to direct that they shall be tried at a particular place named; and also to order that such E. B S. shall, if not bailed be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners In any such case the High Court may direct further, that the notice required by the twenty-eight section of this Act to be given and the papers required by that section to be sent to the Clerk of the Crown, shall be given and sent to a particular Clerk of the Crown named by the High Court in that behalf. Every person bailed or committed to take his trial at any particular place in compliance with a general direction under the provisions of this section, shall be dealt with in all respects as if he had been bailed or committed in compliance with a special direction under the twenty-eight Section of this Act. *Sec.* 31.

When the High Court shall have directed that any E. B. S.

before the jury shall be empannelled, the Majority of the jurors shall consist of Europeans or Americans. If such a jury cannot be procured, the person so charged shall be sent for trial by the High Court in its usual place of sitting. *Sec.* 36.

On every trial mentioned in the thirty fourth Section of this Act the jury shall consist of twelve persons, and unanimity or a Majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity, or of such Majority and concurrence, the prisoner shall be acquitted. *Sec.* 37.

This Act shall commence and come into operation on such date as the G. G of India in Council shall appoint by notification in the Gazette of India. *Sec.* 45.

REGARDING THE TRIAL OF E. B. S. BY THE CHIEF COURT

OF JUDICATURE IN THE PUNJAB.

The Chief Court shall have power, as a court of original jurisdiction, to try E B S. committed to it for trial; and from the date on which this Act shall come into operation no commitment of a E B S. for trial by a High Court of judicature shall be made by any Court or Officer in the Punjab, but every commitment which, if this Act had not been passed could have been made to a High Court, shall be made to the Chief Court. Whenever any such E. B. S. shall be committed or bailed for trial before the Chief Court, the Chief Court shall direct at what place within the limits of jurisdiction the trial shall be held. *XXIII of* 1865, *Sec.* 20.

Whenever the G. G. of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, shall have signified to the High Court that it is intended to issue a commission as aforesaid to any Judge or Judges of the Hight Court *authorizing and directing sittings of the said Judge or Judges* in any place, the High Court shall give notice of such intention to the Court of Session at such place, and thereupon the said Court of Session shall take and cause to be taken the measures prescribed by sections three hundred and thirty six to three hundred and forty, both inclusive of the Code of Criminal Procedure for the summoning of Jurors; and in addition to the persons so summoned as Jurors, the said Court of Session shall, if it shall think needful after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the Military service, resident within ten miles of its place of sitting, as the Court shall consider to be necessary to make up the Juries required for the trial of persons charged with Offences before the Judge of the High Court acting under Commission as aforesaid. All Commissioned and Non-Commissioned Officers so summoned, shall be liable to serve on such juries notwithstanding anything contained in the Code of Criminal Procedure, but no Commissioned or Non-Commissioned Officer shall be summoned whom his Commanding Officer shall desire to have excused on the ground of urgent Military duty or for any other special Military reason. The juries for the trial of persons triable by such Judge of the High Court acting under such Commission as aforesaid, shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned under the said section of the Code of Criminal Procedure and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or if no such Officers have been summoned then solely from the persons summoned under the same sections. *Sec* : 35.

If the person charged shall be a E. B. S. and shall so require,

no such officers have been summoned, then solely from the persons summoned under the same sections. *Sec.* 30.

If any E. B. S. charged as aforesaid shall so require before the jury shall be empannelled, the Majority of the jurors shall consist or Europeans or Americans, or both Europeans and Americans. *Sec.* 31.

On every trial of an E. B. S. under this Act, the jury shall consist of twelve persons, and unanimity, or a Majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity, or of such Majority and concurrence, the prisoner shall be acquitted. *Sec.* 32.

Every E. B. S. apprehended within the Punjab, or delivered into the custody of a Magistrate within the Punjab, wherever apprehended shall be amenable to the law for any offence committed by him within the territory of any Foreign Prince or State, and may be bailed or committed for trial as hereinafter provided on the like evidence as would warrant his being bailed or committed for trial for the same offence if it had been committed in the Punjab. *Sec.* 37.

The committing M. immediately, and before the trial shall report the case of the Lieutenant Governor, and shall obey the orders which he shall receive thereon, and the Lieutenant Governor may order the trial to be had before the Chief Court *Sec.* 38.

When the offence is charged to have been committed in the territory of any Foreign Prince or State, administered by officers acting under the authority of the Government of India, in which territory a Court competent to try the person charged is

during certain specified periods of the year, shall be tried at the usual place of sitting of the court, or to direct that they shall be tried at a particular place named, and also to order that such E. B. S. shall if not bailed, be committed for intermediate custody to a particular jail being one of the jails appointed by the Government for the reception of such prisoners. *Sec.* 28.

All trials under the twentieth section shall be by jury. *Sec.* 29.

Whenever the Chief Court shall have given notice of its intention to hold sittings at any place (whether at the seat of Government of the Punjab or otherwise) for the exercise of its original Criminal jurisdiction, the Court of Session at such place shall take and cause to be taken, the measures prescribed by Section 336 to 340 both inclusive of the Code of Criminal Procedure for the summoning of Jurors, and in addition to the persons so summoned as jurors, the said Court of Session shall if it shall think needful after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the Military service resident within ten miles of its place of sitting as the Court shall consider to be necessary to make up the juries required for the trial of E. B S. charged with offences before the Chief Court as aforesaid. All Commissioned and Non-Commissioned Officers so summoned, shall be liable to serve on such juries notwithstanding anything contained in the Code of Criminal Procedure, but no Commissioned or Non-Commissioned Officer shall be summoned whom his Commanding Officer shall desire to have excused on the ground of urgent Military duty or for any other special Military reason. The juries for the trial of E. B. S. as aforesaid shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned under the said Sections of the Code of Criminal Procedure and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or if

offence described in Section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, or 210 of the Indian Penal Code, the Court may commit such person to take his trial for the offence before the Court of Session, or after making such preliminary enquiry as may be necessary, may send the case for investigation to any M having jurisdiction to try or commit for trial the accused person for the offence charged, and such M shall thereupon proceed according to law. *Act. XXIII of* 1861 *Sec.* 16.

When in any case pending before any Court there shall appear to the Court sufficient ground for sending for investigation to the M a charge described in Section 463, 471, 475, or 476, of the Indian P C which may be preferred in respect to any deed or paper offered in evidence in the case, the Court may send the person accused in custody to the M or take sufficient bail for his appearance before the M. The Court shall send to the M the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such M. The M shall receive such charge, and proceed with it under the rules for the time being in force. *Sec.* 19.

If the person accused or any one of the persons accused in any case falling under Section XVI or Section XIX of this Act, is a E B S the Court shall send such person in custody, or take sufficient bail for his appearance before an officer empowered to commit or hold to bail persons charged with offences for trial before a S C. of Judicature, and such officer shall proceed according to law. *Sec.* 20.

When any such offence as is described in Section 175, 178, 179, 180, or 228 of the Indian P. C. is committed in the view or presence of any Court, it shall be competent to such Court to cause the offender, whether he be a E B S or not, to be detained in custody, and at any time before the rising of the Court on the same day to take cognizance of the offence; and to adjudge

established by authority of the G. G. of India in Council, the Lieutenant Governor may order such person to be conveyed in custody out of the Punjab for the purpose of delivering him up for trial before such Court. *Sec* 39.

When the person charged is committed to custody, the form of the warrant shall specify the commitment to be until the orders of the Lieutenant Governor can be received and acted on. When he is bailed, the form of the bail bond shall be in the first instance to appear before the Magistrate on a certain day assigned, allowing reasonable time for the receipt of the orders of the Lieutenant Governor, and on such subsequent days as the M. shall from time to time require. If the Lieutenant Governor shall order the person charged to be tried in the Chief Court, the M. may cause the bail bond to be renewed in the usual form to appear and take his trial in such Court. *Sec.* 40.

In either case the special order of the Lieutenant Governor shall be deemed full authority either for the trial of the person charged within the Punjab, or for conveying him in custody out of the Punjab as aforesaid. *Sec.* 41.

This Act shall come into operation on such day as the G. G. of India in Council shall fix by a notification published in the *Gazette of India*. *Sec.* 53.

Regarding the procedure to be adopted when the offences of giving false evidence, forgery, and contempts and disobedience of orders are committed before a Civil Court.

When in any case pending before any Court any witness or other person shall appear to the Court to have been guilty of an

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Persons holding these offices are not liable to to dismissed for misconduct without the sanction of the Local Government. *Ibid Sec* : 5.

Insane European British Subjects.

Insane E. B. S. if found wandering about in a dangerous state, and having no relations or friends willing to take charge of them, are liable to be sent to the Insane Asylum at the Presidency ; and the Magistrate is authorized to attach and sell by auction, any property belonging to the lunatic, with a view to the proceeds being applied to the payment of necessary charges of removal, maintenance, clothing, medicine &c. *S. N. A. April 30th* 1841. *No.* 577.

ESTATES OF DECEASED EUROPEAN BRITISH SUBJECTS.

UNDER WHAT CIRCUMSTANCES THE JUDGE MAY TAKE CHARGE OF THE PROPERTY OF A DECEASED PERSON.

Extract of a letter from the Commissioner of the 5th Div. to the Offg. Register S. D A. W. P. dated 2nd October 1835.

I have the honor to request that you will obtain from the Court an opinion on the construction of Sec. 16 Reg. III, 1803, and Sec. 6, Reg. XV. 1806.

Question. 1*st.* Is the interference of the Civil Judge, by Sec. 16. Reg : III. 1803, and Sec : 6 Reg : XV 1806, strictly limited to cases of persons dying intestate or not ?

Question. 2*nd.* Though the will of the deceased be not forthcoming, or no will may exist, ought the Civil Judge to interfere if there be a claimant, a near relation, or respectable friend on the spot, willing to take charge of, and to be resposible for, the property ?

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Under what circumstances the Judge may take charge of the property of a deceased person.

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MISCELLANEOUS.

Petitions and Pleadings in a Civil Court may be filed with a translation in english.

A European defendant filing his petitions and pleadings in the vernacular language, on the prescribed stamp may file a translation thereof in english on unstamped paper. It is no part of the duty of the Court to furnish the defendant with translations; he must procure a person duly qualified to interpret for him. *Cons. No.* 1035.

Depositions in English.

The deposition of a European witness must be recorded in English, and a translation of it prepared by the Court and annexed to it. *Ibid.*

European names to be written in English in Civil processes.

As instances have occurred in which inconvenience and delay have been caused by the difficulty or impossibility of ascertaining the names of Europeans or East Indians, when written in the Persian character only, the Court are pleased to direct, that all names of Europeans or East Indians, which may be entered in processes directed by any of the Civil Courts to other Districts, shall, whenever it may be practicable, be written in the English as well as in the persian character. *S. D. A. Nov. 16th* 1839. *C. O. No* 29.

Eligibility for public employ.

E. B. S. is eligible to be appointed to the office of P. S. Ameen, Sudder Ameen, or Moonsiff. *Act VIII.* 1836.

Every person so appointed is liable to the same proceedings as well Criminal as Civil, and amenable the to jurisdiction of the same tribunals as natives of the country. *Ibid.*

reported, or some other person, shall have obtained letters of administration from that Court, when the property is to be delivered over to the person to whom such letters may have been granted. The terms of the enactment being imperative and express as to the jurisdiction to be exercised by the Zillah Courts in such cases, the Court observe that no discretion whatever is left to the Judge in the matter.

4. With reference to the third point noticed in your letter, the Court direct me to observe, that the course to be pursued by the Zillah and city Judges in matters of this nature is clearly laid down in the Regulations, and they do not consider themselves competent to authorize any deviation therefrom. *Cons. No.* 983.

A Zillah Judge is not required to take charge of the property of a deceased British subject, whose will is forthcoming and that whether a trustee or executor be on the spot or not.

If the will be found subsequently to his taking charge, the Judge is to keep the property under his custody, until probate is duly taken out. *Cons. No.* 1396.

Whenever any British subject shall die leaving personal assets within the limits of the jurisdiction of a Zillah Judge, and no will shall be found among the effects of the deceased, it shall be the duty of the Zillah Judge to report the circumstance without delay to the Administrator General of the Presidency, retaining the property under his charge until letters of administration shall have been obtained by the Administrator General or by some other person from the Supreme Court of Judicature, when the property shall be delivered over to the person obtaining such letters of administration, or, in the event of a will being discovered, to the person who may obtain pro[illegible] of the will. *Act VIII* 1855. *Sec.* 54.

Question. 3*rd* If in the case last mentioned, the Judge be considered bound to take charge of the property, may he not use some discretion, such as feeling and delicacy would naturally suggest, in delaying for a few days the necessary advertisement, thereby to give the friends of the deceased on the spot an opportunity of informing those at a distance of their loss, before the formal announcement is made publicly to the world?

To the Commissioner of Circuit for the 5th Division dated 16th October 1835.

I am directed by the court to communicate to you their opinion as follows, on the several points of Sec. 16, Reg. III, 1803, and Sec. 6. Reg. XV. 1806, mentioned in your letter of the 2nd of that month.

2. In reply to your first question, I am directed to inform you that the interference of the Civil Court with respect to the estates of deceased British Subjects, is not restricted by the sections of the Regulations above quoted to the cases of persons dying intestate, but on the contrary Sec. 6 Reg. XV. 1806 expressly requires that on the demise of a E. B. S within the limits of the jurisdiction of a zillah or city court, the Judge shall take charge of the effects of the deceased, and on a will being discovered shall deliver them over to the person who may obtain probate thereof.

3. In answer to your second question, I am directed to observe that in either of the cases which you have supposed, where the will of the deceased is not forthcoming, or where none may be in existence, notwithstanding that there may be a claimant, near relation, or respectable friend on the spot, willing to take charge of, and to be responsible for, the property, the Regulation before cited renders it obligatory on the Civil Court to interfere, as in the case described in the preceding paragraph, and to retain charge of the estate until the Registrar of the Supreme Court of Judicature, to whom the circumstance is immediately to be

Magistrate and Police not to interfere with personal property of Europeans and East Indians in the service of the Railway Company or of Contractors, dying intestate.

COMPLAINTS having been made by the employès of the Railway Companies, of the interference of the Magisterial and Police Authorities with the personal property of European or East Indian employès in the Railway Company or Contractors' service, dying intestate, the Court are pleased to call the attention of Zillah Judge to the provisions of Section 54, Act VIII of 1855, under which it is the duty of the Zillah Judge to report the death of a British subject dying intestate, to the Administrator General, retaining the property under his charge until letters of administration shall have been obtained by the Administrator General or some other person.

2 The Court at the same time see no objection to any temporary arrangements for the custody of the deceased's effects being made on the spot by the friends of the deceased, subject to the approval of the officer occupying the position or exercising the function of Zillah Judge, to whom it is the duty of such friends to report the death of the deceased, and thereafter to act under the orders of such Officer.

3. It is evident that under the law above quoted it is no part of the duty of the Magistrate or the Police to interfere with, or take charge of property of the above description. Magistrates and Police officers should therefore avoid all interference with such property. *S. D. A. July* 8, 1864. *C. O. No.* 11.

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